**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 459 OF 2002**

Smt. Kamal Mahadev Gurav & Ors. ..Appellants

versus

Jagannath G. Khopade & Ors. ..Respondents

Mr. A. M. Joshi for the Appellants.

Mr. V. B. Konde-Deshmukh for the Respondents.

**CORAM : D. G. DESHPANDE,J.**

**DATE : 22ND JULY,2005**

**ORAL ORDER :**

1. Heard advocate for the Appellants and the Respondents.

2. This is an appeal by the original defendants, whose defence was rejected by both the courts below and claim of the plaintiffs was decreed right throughout. The plaintiffs has purchased a plot of land from the defendants predecessors in title by registered sale deed dated 11.7.1978. In that Sale Deed the description of the property sold is given with its area and it is also mentioned that

the purchaser shall within one year of the sale deed demolish the wall to the western side of the plot, the breadth of which was 2′ x 3". The plaintiffs waited for one year, gave notice to the defendants calling upon them to demolish the wall. The defendants did not give reply and therefore the plaintiffs were constrained to file the suit. The defendants raised contradictory and inconsistent pleadings contending falsely that the plaintiffs have been compensated by some alternative area. Secondly, according to them the wall collapsed down during rainy season. Therefore the defendants predecessors have reconstructed it.

3. Next contention was that the only corner of the wall admeasuring 2′ x 3" was being demolished as per the agreement and nothing more. All these contentions of the defendants were rejected by the trial court as well as the appellate court.

4. When questioned as to what is the substantial question of law involved, counsel for the appellants raised two contentions. Firstly, according to him the case put forth by the plaintiffs and the evidence led by them was contradictory to the sale deed and therefore that was not permissible under Section 92 of the Evidence Act. Because according to him if the plaintiffs

have relied upon the sale deed they could not give evidence contradictory to their own document. Second contention of the advocate for the appellants was that the suit was barred by limitation. When questioned in this regard advocate for the appellants contended that the suit for demolition and possession ought to have been filed within 12 years of the sale deed and the 12 years should not have been counted after the expiry of one year period which was given to the vendor / seller to demolish the wall on their own accord.

5. I do not find any substance in the second contention if in the sale deed period of one year was given to the vendor to demolish the wall then period would automatically commence after the expiry of the one year. Therefore, there is no substance in the contention that the suit was barred by limitation.

6. Even regarding the first argument that the evidence and case of the plaintiffs was contradictory to the sale deed, there is no substance. In fact the case of the plaintiffs is consistent with the sale deed whereas the case of the defendants - appellants is contradictory. Judgment of the Supreme Court reported in **AIR 1982 S.C. 20 Smt. Gangabai vs. Smt. Chhabubai** relied

upon by the advocate for the appellants is also of no help that the case of the plaintiffs was consistent with the sale deed. Thirdly, the defendants have raised inconsistent and contradictory pleas. Counsel for the appellants contended that it was open to the defendants to do so. If that is the stand of the defendants then they must suffer because raising contradictory pleas weakens the case of such a party.

7. Thus the case is solely based on facts as pleaded and proved. No substantial question of law is involved. Appeal is therefore dismissed along with Civil Application. Prayer for stay is rejected.

22.7.2005 (D.G. DESHPANDE, J.)